

Mark Stephen Eisen, State Bar No. 289009  
[meisen@edelson.com](mailto:meisen@edelson.com)  
**EDELSON PC**  
555 West Fifth Street, 31st Floor  
Los Angeles, CA 90013  
Telephone: +1 213 533 4100  
Facsimile: +1 213 947 4251

[Other attorneys on signature page]

Attorney for Plaintiff  
**JOSHUA SMITH**

Tod L. Gamlen, State Bar No. 83458  
[tod.gamlen@bakermckenzie.com](mailto:tod.gamlen@bakermckenzie.com)  
**BAKER & MCKENZIE LLP**  
660 Hansen Way  
Palo Alto, CA 94304  
Telephone: +1 650 856 2400  
Facsimile: +1 650 856 9299

Teresa H. Michaud, State Bar No. 296329  
[teresa.michaud@bakermckenzie.com](mailto:teresa.michaud@bakermckenzie.com)  
Christina M. Wong, State Bar No. 288171  
[christina.wong@bakermckenzie.com](mailto:christina.wong@bakermckenzie.com)

Mark D. Taylor (Admitted *Pro Hac Vice*)  
[mark.taylor@bakermckenzie.com](mailto:mark.taylor@bakermckenzie.com)  
**BAKER & MCKENZIE LLP**  
2300 Trammell Crow Center  
2001 Ross Avenue  
Dallas, TX 75201  
Telephone: +1 214 978 3000  
Facsimile: +1 214 978 3099

Attorneys for Defendants  
PEGATRON USA, INC., ASROCK  
AMERICA, INC., and FATALITY, INC.,  
d/b/a FATALITY, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JOSHUA SMITH, individually and on behalf of all others similarly situated,

**Plaintiff,**

V.

PEGATRON USA, INC., a California corporation, ASROCK AMERICA, INC., a California corporation, and FATALITY, INC., d/b/a Fatality, Inc., a Missouri corporation,

### Defendants.

Case No. 3:14-cv-01822-CRB

## **STIPULATION AND ORDER RE PROTECTION OF CONFIDENTIAL INFORMATION**

First Amended Complaint Filed:  
July 3, 2014

1           **1. PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production of  
 3 confidential, proprietary, or private information for which special protection from public disclosure  
 4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
 5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
 6 Order. The parties acknowledge that this Order does not confer blanket protections on all  
 7 disclosures or responses to discovery and that the protection it affords from public disclosure and use  
 8 extends only to the limited information or items that are entitled to confidential treatment under the  
 9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.4, below, that  
 10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
 11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be  
 12 applied when a party seeks permission from the court to file material under seal.

13           **2. DEFINITIONS**

14           2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
 15 information or items under this Order.

16           2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
 17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
 18 Civil Procedure 26(c).

19           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
 20 as their support staff).

21           2.4     Designating Party: a Party or Non-Party that designates information or items that it  
 22 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24           2.5     Disclosure or Discovery Material: all items or information, regardless of the medium  
 25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
 26 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
 27 discovery in this matter.

28           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to

1 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
 2 consultant in this action, (2) is not a past or current employee of a Party or a Party's competitor, and  
 3 (3) at the time of retention, is not anticipated to become an employee of a Party or a Party's  
 4 competitor.

5       2.7     "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:  
 6 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or  
 7 Non-Party would create a substantial risk of serious competitive, financial or commercial harm that  
 8 could not be avoided by less restrictive means. For purposes of this definition, the designation  
 9 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" will have the same effect, offer the same  
 10 protection, and have the same meaning in this Protective Order as the designation "HIGHLY  
 11 CONFIDENTIAL – ATTORNEYS' EYES ONLY".

12       2.8     Non Party: any natural person, partnership, corporation, association, or other legal  
 13 entity not named as a Party to this action.

14       2.9     Outside Counsel of Record: attorneys who are not employees of a party to this action  
 15 but are retained to represent or advise a party to this action and have appeared in this action on  
 16 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

17       2.10    Party: any party to this action, including all of its officers, directors, employees,  
 18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19       2.11    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 20 Material in this action.

21       2.12    Professional Vendors: persons or entities that provide litigation support services  
 22 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
 23 storing, or retrieving data in any form or medium) and their employees and subcontractors.

24       2.13    Protected Material: any Disclosure or Discovery Material that is designated as  
 25 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

26       2.14    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 27 Producing Party.

28       2.15    Competitive Expert: a person who has been retained by a Party or its counsel to

1 serve as an expert witness or as a consultant in this action and who has been an employee, officer,  
 2 director, partner, shareholder of a Party or a Party's competitor or a Party's affiliate or, at the time of  
 3 retention, anticipates becoming an employee, officer, director, partner, shareholder of a Party or a  
 4 Party's competitor or a Party's affiliate.

### 5       **3.       SCOPE**

6       The protections conferred by this Stipulation and Order cover not only Protected Material (as  
 7 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
 8 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
 9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
 10 However, the protections conferred by this Stipulation and Order do not cover the following  
 11 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
 12 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
 13 publication not involving a violation of this Order, including becoming part of the public record  
 14 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
 15 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
 16 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
 17 Protected Material at trial shall be governed by a separate agreement or order.

### 18       **4.       DURATION**

19       Even after final disposition of this litigation, the confidentiality obligations imposed by this  
 20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
 21 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
 22 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
 23 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
 24 time limits for filing any motions or applications for extension of time pursuant to applicable law.

### 25       **5.       DESIGNATING PROTECTED MATERIAL**

26       **5.1      Exercise of Restraint and Care in Designating Material for Protection.** Each Party or  
 27 Non-Party that designates information or items for protection under this Order must take care to  
 28 limit any such designation to specific material that qualifies under the appropriate standards. To the

1 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
 2 material, documents, items, or oral or written communications that qualify – so that other portions of  
 3 the material, documents, items, or communications for which protection is not warranted are not  
 4 swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations, or refusals to  
 6 re-designate under the procedure described in Section 6, that are shown to be clearly unjustified or  
 7 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
 8 development process or to impose unnecessary expenses and burdens on other parties) expose the  
 9 Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it designated for  
 11 protection do not qualify for protection at all or do not qualify for the level of protection initially  
 12 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
 13 mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
 15 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
 16 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
 17 designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
 20 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
 21 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to  
 22 each page that contains protected material. If only a portion or portions of the material on a page  
 23 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
 24 by making appropriate markings in the margins) and must specify, for each portion, the level of  
 25 protection being asserted.

26 A Party or Non-Party that makes original documents or materials available for inspection  
 27 need not designate them for protection until after the inspecting Party has indicated which material it  
 28 would like copied and produced. During the inspection and before the designation, all of the

1 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
 2 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
 3 copied and produced, the Producing Party must determine which documents, or portions thereof,  
 4 qualify for protection under this Order. Then, before producing the specified documents, the  
 5 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
 6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.  
 7 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
 8 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
 9 margins) and must specify, for each portion, the level of protection being asserted.

10       (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
 11 Designating Party identify on the record, before the close of the deposition, hearing, or other  
 12 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
 13 impractical to identify separately each portion of testimony that is entitled to protection and it  
 14 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
 15 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
 16 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
 17 sought and to specify the level of protection being asserted. Only those portions of the testimony  
 18 that are appropriately designated for protection within the 21 days shall be covered by the provisions  
 19 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition  
 20 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be  
 21 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22       Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
 23 other proceeding to include Protected Material so that the other parties can ensure that only  
 24 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
 25 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
 26 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 27 ATTORNEYS’ EYES ONLY.”

28       Transcripts containing Protected Material shall have an obvious legend on the title page that

1 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
 2 (including line numbers as appropriate) that have been designated as Protected Material and the level  
 3 of protection being asserted by the Designating Party. The Designating Party shall inform the court  
 4 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day  
 5 period for designation shall be treated during that period as if it had been designated “HIGHLY  
 6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
 7 expiration of that period, the transcript shall be treated only as actually designated.

8                   (c) for information produced in some form other than documentary and for any other  
 9 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
 10 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
 11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information  
 12 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
 13 portion(s) and specify the level of protection being asserted.

14                 5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 15 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 16 right to secure protection under this Order for such material. Upon timely correction of a  
 17 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
 18 accordance with the provisions of this Order.

## 19                 6.     **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20                 6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 21 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
 22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
 23 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
 24 confidentiality designation by electing not to mount a challenge promptly after the original  
 25 designation is disclosed.

26                 6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
 27 by providing written notice of each designation it is challenging and describing the basis for each  
 28 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must

1 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
 2 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
 3 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
 4 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
 5 Party must explain the basis for its belief that the confidentiality designation was not proper and  
 6 must give the Designating Party an opportunity to review the designated material, to reconsider the  
 7 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
 8 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
 9 has engaged in this meet and confer process first or establishes that the Designating Party is  
 10 unwilling to participate in the meet and confer process in a timely manner.

11       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
 12 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
 13 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
 14 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
 15 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
 16 competent declaration affirming that the movant has complied with the meet and confer  
 17 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
 18 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
 19 automatically waive the confidentiality designation for each challenged designation. In addition, the  
 20 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
 21 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
 22 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
 23 competent declaration affirming that the movant has complied with the meet and confer  
 24 requirements imposed by the preceding paragraph.

25              The burden of persuasion in any such challenge proceeding shall be on the Designating  
 26 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 27 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
 28 Unless the Designating Party has waived the confidentiality designation by failing to seek judicial

1 intervention as described above, all parties shall continue to afford the material in question the level  
 2 of protection to which it is entitled under the Producing Party's designation until the court rules on  
 3 the challenge.

4       **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5       7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 8 the categories of persons and under the conditions described in this Order. When the litigation has  
 9 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
 10 DISPOSITION).

11       Protected Material must be stored and maintained by a Receiving Party at a location and in a  
 12 secure manner that ensures that access is limited to the persons authorized under this Order.

13       7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
 14 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
 15 information or item designated “CONFIDENTIAL” only to:

16           (a) the named parties and the Receiving Party’s Outside Counsel of Record in this action, as  
 17 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
 18 the information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
 19 Bound” that is attached hereto as Exhibit A;

20           (b) the officers, directors, and employees (including House Counsel) of the Receiving Party  
 21 to whom disclosure is reasonably necessary for this litigation and who have signed the  
 22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
 24 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
 25 to Be Bound” (Exhibit A);

26           (d) Competitive Experts of the Receiving Party to whom disclosure is reasonably necessary  
 27 for this litigation, and who have signed the “Acknowledgment and Agreement to Be Bound”  
 28 (Exhibit A);

(e) the court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

## 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Competitive Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional

1 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
 2 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

3 (f) the author or recipient of a document containing the information or a custodian or other  
 4 person who otherwise possessed or knew the information.

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
 6 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Competitive  
 7 Experts.

8 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
 9 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has  
 10 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
 11 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full  
 12 name of the Designated House Counsel and the city and state of his or her residence, and (2)  
 13 describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
 14 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
 15 become involved, in any competitive decision-making.

16 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
 17 Party, a Party that seeks to disclose to a Competitive Expert (as defined in this Order) any  
 18 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 19 ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that  
 20 (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 21 ONLY” information that the Receiving Party seeks permission to disclose to the Competitive Expert,  
 22 (2) sets forth the full name of the Competitive Expert and the city and state of his or her primary  
 23 residence, (3) attaches a copy of the Competitive Expert’s current resume, (4) identifies the  
 24 Competitive Expert’s current employer(s), (5) identifies each person or entity from whom the  
 25 Competitive Expert has received compensation or funding for work in his or her areas of expertise or  
 26 to whom the expert has provided professional services, including in connection with a litigation, at  
 27 any time during the preceding five years, and (6) identifies (by name and number of the case, filing  
 28 date, and location of court) any litigation in connection with which the Competitive Expert has

1 offered expert testimony, including through a declaration, report, or testimony at a deposition or  
 2 trial, during the preceding five years.

3           (b) A Party that makes a request and provides the information specified in the preceding  
 4 respective paragraphs may disclose the subject Protected Material to the identified Designated House  
 5 Counsel or Competitive Expert unless, within 14 days of delivering the request, the Party receives a  
 6 written objection from the Designating Party. Any such objection must set forth in detail the  
 7 grounds on which it is based.

8           (c) A Party that receives a timely written objection must meet and confer with the  
 9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
 10 within seven days of the written objection. If no agreement is reached, the parties shall comply with  
 11 the undersigned's Standing Order re Civil Discovery Disputes. Any such DDJR must describe the  
 12 circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House  
 13 Counsel or the Competitive Expert is reasonably necessary, assess the risk of harm that the  
 14 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In  
 15 addition, any such DDJR must describe the parties' efforts to resolve the matter by agreement (i.e.,  
 16 the extent and the content of the meet and confer discussions) and set forth the reasons advanced by  
 17 the Designating Party for its refusal to approve the disclosure.

18           In any such proceeding, the Party opposing disclosure to Designated House Counsel or the  
 19 Competitive Expert shall bear the burden of proving that the risk of harm that the disclosure would  
 20 entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the  
 21 Protected Material to its Designated House Counsel or Competitive Expert.

22           **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 23 OTHER LITIGATION**

24           If a Party is served with a subpoena or a court order issued in other litigation that compels  
 25 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY  
 26 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

27           (a) promptly notify in writing the Designating Party. Such notification shall include a copy  
 28 of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.<sup>1</sup>

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in

<sup>1</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
 2 information requested; and

3       3. make the information requested available for inspection by the Non-Party.

4       (c) If the Non-Party fails to object or seek a protective order from this court within 14 days  
 5 of receiving the notice and accompanying information, the Receiving Party may produce the Non-  
 6 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a  
 7 protective order, the Receiving Party shall not produce any information in its possession or control  
 8 that is subject to the confidentiality agreement with the Non-Party before a determination by the  
 9 court.<sup>2</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
 10 seeking protection in this court of its Protected Material. Any disclosure or discovery disputes are  
 11 subject to the undersigned's Standing Order re Civil Discovery Disputes.

12       (d) This Stipulated Protective Order shall apply to and be enforceable by each and every  
 13 Party who is named as a Party, or added as a Party, to this action after entry of this Stipulated  
 14 Protective Order and each such subsequently added Party shall be bound by its terms.

15       **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16       If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 17 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
 18 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
 19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,  
 20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
 21 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
 22 Be Bound" that is attached hereto as Exhibit A.

23       **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 24           PROTECTED MATERIAL**

25       When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
 26 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties

27       

---

<sup>2</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
 28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
 interests in this Court.

1 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
 2 modify whatever procedure may be established in an e-discovery order that provides for production  
 3 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
 4 parties reach an agreement on the effect of disclosure of a communication or information covered by  
 5 the attorney-client privilege or work product protection, the parties may incorporate their agreement  
 6 in the stipulated protective order submitted to the court.

7 **12. MISCELLANEOUS**

8       12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
 9 its modification by the court in the future.

10      12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
 11 no Party waives any right it otherwise would have to object to disclosing or producing any  
 12 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
 13 Party waives any right to object on any ground to use in evidence of any of the material covered by  
 14 this Protective Order.

15       12.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
 16 laws and regulations relating to the export of technical data contained in such Protected Material,  
 17 including the release of such technical data to foreign persons or nationals in the United States or  
 18 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
 19 data, and the Receiving Party shall take measures necessary to ensure compliance.

20       12.4 Filing Protected Material. Without written permission from the Designating Party or  
 21 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
 22 public record in this action any Protected Material. A Party that seeks to file under seal any  
 23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
 24 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
 25 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
 26 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
 27 protection under the law. If a Receiving Party's request to file Protected Material under seal  
 28 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the

1 Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise  
 2 instructed by the court.

3 **13. FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
 5 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
 6 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
 7 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
 8 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
 9 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
 10 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
 11 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
 12 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
 13 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
 14 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
 15 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
 16 and expert work product, even if such materials contain Protected Material. Any such archival  
 17 copies that contain or constitute Protected Material remain subject to this Protective Order as set  
 18 forth in Section 4 (DURATION).

19 For a period of six month after final disposition of this action, this Court will retain  
 20 jurisdiction to enforce the terms of this order.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: November 17, 2014

BAKER & MCKENZIE LLP

3 By: /s/ Tod L. Gamlen

4 Tod L. Gamlen

5 [tod.gamlen@bakermckenzie.com](mailto:tod.gamlen@bakermckenzie.com)

6 BAKER & MCKENZIE LLP

660 Hansen Way

7 Palo Alto, CA 94304

8 Telephone:+1 650 856 2400

9 Attorneys for Defendant

10 FATAL1TY, INC.

11 Dated: November 17, 2014

12 EDELSON PC

13 By: /s/ Benjamin Scott Thomassen

14 Benjamin Scott Thomassen (admitted *Pro Hac Vice*)

15 [bthomassen@edelson.com](mailto:bthomassen@edelson.com)

16 Jay Edelson (admitted *Pro Hac Vice*)

17 [jedelson@edelson.com](mailto:jedelson@edelson.com)

18 Amir Cheyenne Missaghi (admitted *Pro Hac Vice*)

19 [amissaghi@edelson.com](mailto:amissaghi@edelson.com)

20 Rafe S. Balabanian (admitted *Pro Hac Vice*)

21 [rbalabanian@edelson.com](mailto:rbalabanian@edelson.com)

22 EDELSON PC

23 350 North LaSalle Street, Suite 1300

24 Chicago, IL 60654

25 Telephone: +1 312 572 7202

26 Mark Stephen Eisen, State Bar No. 289009

27 [meisen@edelson.com](mailto:meisen@edelson.com)

28 EDELSON PC

29 555 West Fifth Street, 31st Floor

30 Los Angeles, CA 90013

31 Telephone: +1 213 533 4100

32 Attorneys for Plaintiff

33 JOSHUA SMITH

## **SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5.1(i)(3), I hereby attest that concurrence has been obtained in the filing of this document from each of the other signatories shown above.

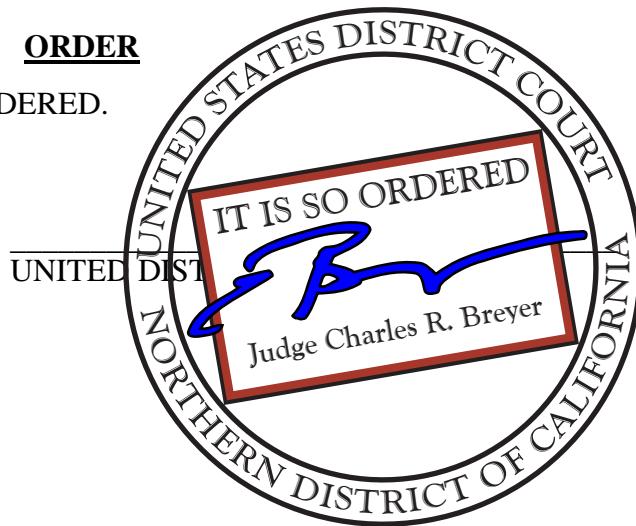
Dated: November 17, 2014

By: /s/ Tod L. Gamlen  
Tod L. Gamlen

## ORDER

Pursuant to stipulation IT IS SO ORDERED.

Date: November 18, 2014



## **EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, declare:

1. My address is \_\_\_\_\_, and my present occupation is \_\_\_\_\_.
2. I have received a copy of the STIPULATION AND ORDER RE PROTECTION OF CONFIDENTIAL INFORMATION ("the Confidentiality Protective Order") in the action entitled *Joshua Smith, individually and on behalf of all others similarly situated, Plaintiff, v. Pegatron USA, Inc., et al., Defendants*, pending in the United States District Court for the Northern District of California, Case No. 3:14- cv-01822-CRB. I have carefully read and understand the provisions of the Confidentiality Protective Order.

3. I will comply with all of the provisions of the Confidentiality Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Confidential Protective Order, and will not copy or use except for purposes of the above referenced action, any information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" which I receive in the above referenced action.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014 at \_\_\_\_\_  
\_\_\_\_\_.  
\_\_\_\_\_.

I declare under penalty of perjury that the foregoing is true and correct.